



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: LLP/Costs:BMsh080824

8 August 2024

Dr. James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: john.farrell@lawcouncil.asn.au

Dear Dr Popple,

Joint Costs Advisory Committee Inquiry 2024

Thank you for the opportunity to participate in a possible Law Council submission to the Joint Costs Advisory Committee (**JCAC**) in relation to its 2024 Inquiry into Legal Practitioners' Scale of Costs. The Law Society's Costs and Litigation Law and Practice Committees have contributed to this submission.

We agree with the Law Council that the scales of costs across the federal courts have failed to keep pace with actual costs incurred by parties, and do not reflect the value of the intellectual work undertaken by lawyers, current charging practices, current market conditions, nor changes in the technology used by practitioners.

Federal Circuit and Family Court of Australia

Our members support an increase to the Federal Circuit and Family Court of Australia scales to similar scale charges as detailed in the Federal Court Schedule 3 scale, with increases implemented to those scale charges applying on an ongoing basis. We believe that the current Federal Circuit and Family Court scales do not ensure successful parties obtain a reasonable recovery for party/party costs when they obtain the benefit of a costs order.

Updating of Fees

We are of the view that scales and fees generally require more regular and objective review to ensure allowable costs/fees keep pace with developments in the market. We note, for example that the Federal Court's National Guide to Counsel Fees has not been updated for more than 10 years, with the last version issued by the Court in 2013.

Increased use of technology

Our members also support a review of itemised costs currently provided for under the fee scales against the types of costs reasonably incurred by practitioners when conducting matters using technology approved by the Courts. The Law Society agrees with the view

previously expressed by the Law Council that the scales must be living documents, which reflect the actual practices of the Courts and the profession, to ensure they represent a fair and accurate estimate of work reasonably required to be undertaken. We acknowledge that the JCAC has previously responded that consideration of such matters was outside the scope of their work, and would endorse the Law Council restating its previous recommendation that the JCAC seek a referral from the Courts to consider such changes.¹

Thank you for the opportunity to provide our views.

Questions in the first instance may be directed to Sonja Hewison, Policy Lawyer on Sonja.Hewison@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a stylized flourish extending to the right.

Brett McGrath
President

¹ <https://lawcouncil.au/resources/submissions/2022-inquiry-into-legal-practitioners-scales-of-costs>, 8.